discretion was whether, the law being what it is and the plaintiffs therefore having the choice of proceeding by motion or by summons, it was reasonable and proper, to quote the words of Tomlin J. in *Fox v. Luke*[1] *supra*, for the plaintiffs to proceed by way of motion in open Court instead of by the less expensive procedure of summons in chambers. It is clear that the learned trial Judge did not apply his mind to this question at all and consequently there was no real exercise of judicial discretion in this case. It is equally clear that if he had applied his mind to the question, he would have found no materials upon which he could have ordered the defendant to pay more than the costs of proceeding by way of summons.

Accordingly I would propose that the order of the learned Judge in this case be varied by ordering that the defendant pay only such costs as would have been incurred if the application for judgment had been made by summons in chambers. The defendant must have the costs of this appeal.

Such costs fixed at $1,000.00.

Order varied.

Solicitors: *Braddell Bros.; R. C. H. Lim & Co.*

PUBLIC PROSECUTOR v. JOMI

[R. Cr. J. (Smith J.) June 14, 1957]

[Malacca — Criminal Revision No. 6 of 1956]

Criminal Procedure Code (Cap. 21), s. 183(2) — Conditional discharge — No conviction to be recorded.

No conviction should be recorded against a person charged before a Court with an offence punishable by such Court, where the Court finds that the charge is proved, but is of the opinion that the offender should be discharged conditionally on his entering into a bond with or without sureties under the provisions of section 183(2) of the Settlements Criminal Procedure Code. The order in such a case should follow the wording of the section in question.

[**Editorial Note:** section 183 of the Criminal Procedure Code (Cap. 21) in Singapore was repealed by Ordinance No. 27 of 1951, See now section 5 of the Probation of Offenders Ordinance (Cap. 135).]

CRIMINAL REVISION.

L. A. Massie (Federal Counsel) for the appellant.

Respondent in person.

Smith J. : — The accused in this case was charged with the offence of possession of scrap rubber reasonably suspected of being stolen, an offence under regulation 4(1) of the Emergency (Rubber Control) Regulations, 1949, and punishable under Regulation 5(2) thereof.

The learned President found the case against the accused proved and was of opinion that in this case the appropriate course was to bind the accused over in the sum of $500 with two sureties under the supervision of the Probation Officer for one year. The learned President had, however, recorded a conviction and, on conviction, it is obligatory that the Court shall pass a sentence of imprisonment not being less than three months — see Regulation 5(2).

In order to give effect to the order of the learned President, it is necessary that the conviction be varied and that there be substituted therefor a statement that the case against the accused has been proved.

In order to give effect to the bond proposed by the learned President, I varied his order to one discharging the offender conditionally upon her entering into a bond with two sureties to be of good behaviour and to appear for conviction and sentence when called upon at any time during the next one year. This is the appropriate order under section 183(2) of the Straits Criminal Procedure Code when the Court has found that the charge is proved but there are extenuating circumstances.

Order accordingly.

PERUMAL CHETTIAR v. PUBLIC PROSECUTOR

[A. Cr. J. (Good J.) June 28, 1957]

[Ipoh — Criminal Appeal No. 20 of 1957]

Criminal Procedure Code (Cap. 6), ss. 165 & 302(ii) — Where plea of autrefois acquit not available — Possession of stolen property.

This was an appeal against a conviction for an offence under section 6 of the Second-hand Dealers Ordinance, 1946, punishable under section 9. The main ground of appeal was that the Magistrate should have accepted the plea of *autrefois acquit* put forward at the trial, as the accused had been previously tried on a charge under section 29 of the Minor Offences Ordinance, 1955, of being in possession of property reasonably suspected of being stolen and was acquitted.

Held: (1) in this case the plea of *autrefois acquit* was not available to the appellant at his second trial;

(2) possession of the property which was an ingredient of the charge at the first trial was the necessary consequence of the purchase of the property which was an ingredient of the charge at the second trial, but these were two separate and distinct acts so connected together to form the same transaction;

(3) in this case the accused could have been charged at the first trial with both offences under section 165 of the Criminal Procedure Code and therefore section 302(ii) of the Criminal Procedure Code applied and the Magistrate could properly try the accused at the second trial on the charge which was the occasion of the appeal.